

No. 14649

**United States
Court of Appeals**
for the Ninth Circuit

CIVIL AERONAUTICS BOARD,
Appellant,

vs.

CALIFORNIA CENTRAL AIRLINES, INCOR-
PORATED,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 54)

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ and
ANDREW J. WEISZ,
Assistants U. S. Attorney;

STANLEY N. BARNES,
Assistant Attorney General;

JAMES E. KILDAY and
ALBERT PARKER,
Special Assistants to the Attorney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil
Aeronautics Board;
600 Federal Building,
Los Angeles 12, California.

For Appellee:

PERRY H. TAFT,
ALFRED C. ACKERSON,
770 Subway Terminal Building,
417 South Hill Street,
Los Angeles 13, California.

QUITTNER & STUTMAN,
FRANCIS F. QUITTNER,
639 South Spring Street,
Los Angeles 14, California.

United States District Court, Southern District of
California, Central Division

Civil No. 16755-C

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

CALIFORNIA CENTRAL AIRLINES, INCOR-
PORATED,

Defendant.

COMPLAINT FOR INJUNCTION

The plaintiff, the Civil Aeronautics Board, hereinafter sometimes referred to as the Board, by its attorneys, complaining of the defendant, alleges as follows:

1. The jurisdiction of this Court is based upon section 1007 of the Civil Aeronautics Act of 1938, as amended (52 Stat. 1025, 49 U.S.C. 647).

2. The plaintiff is the Federal regulatory agency created by the Civil Aeronautics Act of 1938, as amended (Act of June 23, 1938, Ch. 601, 52 Stat. 997; Reorg. Plan No. IV, Section 7, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1235, 49 U.S.C. 401, et seq., hereinafter sometimes referred to as the Act), charged with the responsibility for the regulation of air transportation and the performance of certain duties [2*] prescribed in said Act, including the issuance to air carriers of certificates

*Page numbering appearing at foot of page of original Certified Transcript of Record.

of public convenience and necessity and other authority to engage in air transportation, and causing to be instituted appropriate proceedings for the enforcement of the provisions of such Act against air carriers engaging in air transportation without authority therefor from the plaintiff.

3. The defendant, a citizen of the United States, was at all times herein mentioned and now is a corporation organized and existing under the laws of the State of Nevada, having its principal offices and carrying on business within the Southern District of California at Lockheed Air Terminal, Burbank, California.

4. Section 1(2) of the Civil Aeronautics Act (52 Stat. 977, 49 U.S.C. 401(2)) defines the term "air carrier" as used therein to mean any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation. The term "air transportation" is in turn defined by sections 1(10) and 1(21) of the Act (52 Stat. 977, 49 U.S.C. 401(10) and (21)). The terms "air carrier," "air transportation" and "interstate air transportation," wherever they appear herein, are used in the sense defined by the said sections 1(2), 1(10) and 1(21) of the Act.

5. The Civil Aeronautics Act, particularly section 401(a) thereof (52 Stat. 987, 49 U.S.C. 481(a)), prohibits any air carrier from engaging in "air transportation" unless there is in force a certificate of public convenience and necessity or other author-

ity issued by the plaintiff authorizing such air carrier to engage in air transportation. Section 416(b) of the Act (52 Stat. 1004, 49 U.S.C. 496(b)) empowers the plaintiff, under certain conditions, to exempt air carriers from the necessity of compliance with certain provisions of the Act, including the requirements of section 401(a) thereof.

6. Since 1949 and to the date hereof, the defendant has been engaged in the operation of flights of aircraft between various places in the State of California, including San Diego, Burbank, San [3] Francisco and Oakland on which flights it has been and is carrying passengers as a common carrier for compensation and hire. The defendant does not have a certificate of public convenience and necessity, an exemption under section 416(b) of the Act (52 Stat. 1004, 49 U.S.C. 496 (b)), or any other authority from the plaintiff authorizing it to engage in air transportation.

7. Beginning prior to September 1, 1953, and continuing to the date hereof, defendant has carried on the flights operated by it between points within the State of California, a substantial number of persons the origination or destination of whose journeys have been places outside the State of California.

8. By reason of the activities and practices described in paragraph 7 hereto, the defendant has engaged in interstate air transportation as an air carrier within the meaning of the Act. Since the

defendant has not been issued a certificate of public convenience and necessity or other authority authorizing it to engage in such air transportation, the defendant has thereby violated section 401(a) of the Act.

9. The plaintiff is informed and believes and, therefore, alleges that the defendant will persist in the activities and practices hereinbefore described, and unless it is promptly restrained and enjoined as hereinafter prayed, it will continue to commit the aforesaid violations of the said Act.

10. A judgment by the Court enjoining and restraining the violations hereinabove alleged is authorized by section 1007 of the Act, upon application of this plaintiff.

Wherefore, the plaintiff demands judgment as follows:

(a) That the defendant and its officers, agents, employees and representatives and each of them be enjoined during the pendency of this action and permanently:

(1) From engaging in air transportation in violation of section 401(a) of the Civil Aeronautics Act of 1938, as amended; and

(2) From transporting on its flights any person for [4] compensation or hire whose transportation originates or terminates at a place outside of the State of California.

(b) That the plaintiff be granted such other and further relief as the Court may deem necessary and appropriate.

/s/ STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ and
ANDREW J. WEISZ,
Assistants U. S. Attorney;

By /s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

/s/ JAMES E. KILDAY,
/s/ ALBERT PARKER,
Special Assistants to the
Attorney General;

/s/ JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics Board, Attorneys for the Plaintiff.

Duly verified.

[Endorsed]: Filed May 6, 1954. [5]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT
FOR INJUNCTION

Answering Plaintiff's Complaint on File Herein,
the Defendant, California Central Airlines, Incorporated, Admits, Denies, Alleges, and Moves
as Follows:

I.

Answering paragraph 2 of plaintiff's Complaint, defendant admits that plaintiff, Civil Aeronautics Board, is a regulatory agency created by the Civil Aeronautics Act of 1938, having powers and duties pertaining to the economic regulation of interstate air carriers as distinguished from the Civil Aeronautics Administration likewise created by said Act and having powers and duties pertaining to safety regulations under said Act. Defendant admits, therefore, the status and authority of plaintiff insofar as the same relates to air transportation (as distinguished from air commerce) as defined in the Civil Aeronautics Act of 1938 as amended, to wit:

"Interstate air transportation," "overseas [7] air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively:

"(a) A place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District

of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

“(b) A place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

“(c) A place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.”

II.

Answering paragraph 4 of plaintiff's Complaint defendant admits the allegations thereof and alleges that the defendant is not an “air carrier” as defined in the Civil Aeronautics Act.

III.

Defendant denies the allegations of paragraph 7 of plaintiff's Complaint insofar as said paragraph alleges that “a substantial number of persons the origination or destination of whose journeys [8] have been places outside the State of California” have been transported by defendant, and alleges that the number of such passengers have not been unsubstantial, but have been negligible compared to

the total number of passengers transported on defendant's lines.

IV.

Defendant denies each and every allegation contained in paragraph 8 of plaintiff's Complaint.

V.

Defendant denies each and every allegation of paragraph 9 of plaintiff's Complaint.

VI.

Denies each and every allegation of paragraph 10 of plaintiff's Complaint.

For a Separate and Affirmative Defense to Plaintiff's Complaint, Defendant Alleges that said Complaint fails to state a claim against defendant upon which relief can be granted.

Wherefore, defendant prays that the Complaint filed herein be dismissed; that the injunction prayed for in said Complaint be denied, and that defendant have such other and further relief as to this Court seems just and proper in the premises.

PERRY H. TAFT and
ALFRED C. ACKERSON,

By /s/ ALFRED C. ACKERSON,
Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed July 13, 1954. [9]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the annexed affidavits of John F. Wright, Franklin Oelschlager, Joseph W. Stout, Jr., Robert F. Rickey and John W. Chambers, and upon the verified complaint filed herein it is hereby:

Ordered, that the defendant in the above-entitled action, California Central Airlines, Incorporated, appear on the 17th day of May, 1954, at 10 o'clock a.m. of that day, or as soon thereafter as counsel may be heard, at Room 5, United States Courthouse and Post Office Building, Temple and Spring Streets, in the City of Los Angeles, California, and show cause why an injunction during the pendency of this action should not be issued as prayed for in the said complaint.

It Is Further Ordered:

That the service of a copy of the Order to Show Cause and annexed [11] affidavits, together with a copy of the aforesaid complaint of the Civil Aeronautics Board upon the defendant be made on or before the 10th day of May, 1954, and that such service be deemed sufficient service hereof.

Dated: Los Angeles, California, May 6, 1954.

/s/ HARRY C. WESTOVER,

United States District Judge.

[Endorsed]: Filed May 6, 1954. [12]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

John F. Wright, being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as a Compliance Attorney.

2. This is an action seeking an injunction restraining the defendant from violating section 401(a) of the Civil Aeronautics Act of 1938, as amended.

3. Jurisdiction to entertain this action is conferred upon this court by section 1007(a) of said Act.

4. The complaint charges that the defendant has engaged, and is engaging, in air transportation of persons without authority from the [13] Civil Aeronautics Board and thereby, is violating section 401(a) of the Act.

5. The verified complaint and affidavits submitted herewith show that despite the fact that the defendant has no such authority therefor, it has been and is regularly engaged in the carriage for compensation or hire of interstate passengers traveling both east and west transcontinentally by carrying such persons on its flights between Burbank

and San Diego and Oakland and San Francisco, California.

6. The defendant has committed the aforesaid violations for a substantial period of time. Unless promptly restrained, the defendant may be expected, on the basis of its past conduct and operations, to continue the activities complained of, and affiant is informed and believes that defendant intends to continue such activities.

7. In the light of the facts set forth in the complaint, affidavits and exhibits, the public cannot immediately and adequately be protected against the violations complained of except through the interlocutory relief prayed for in said complaint.

8. No previous application for the relief demanded herein has been made.

/s/ JOHN F. WRIGHT.

Subscribed and sworn to before me this 29th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public.

My commission expires: 1-14-58. [14]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

Joseph W. Stout, Jr., being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. On various occasions during the period between September 22, 1953, and the latter part of October, 1953, affiant personally conducted an investigation to ascertain the facts as to the transportation of interstate passengers by California Central Airlines.

3. During the period between September 22, 1953, and October 22, 1953, affiant conducted his investigation of the activities of California Central in Los Angeles and Burbank. His investigation disclosed that various air carriers operating transcontinentally from Burbank, California, were using California Central to provide air transportation between Burbank and San Diego and Oakland for their passengers.

4. On October 1, 1953, affiant visited the offices of U. S. Aircoach at Lockheed Air Terminal, Burbank, and interviewed Mr. Fritz Hutcheson, the President of U. S. Aircoach, with respect to the transfer of U. S. Aircoach interstate passengers to

California Central for onward transportation to San Diego and Oakland.

Mr. Hutcheson stated that the service of California Central is available for U. S. Aircoach and for a long time has been, and is used to San Diego and Oakland for the continuing transportation of passengers who are transported by [15] U. S. Aircoach from points outside of California to Burbank where they are transferred to flights of California Central. He explained that this service was mainly used for passengers destined to San Diego because U. S. Aircoach usually operates its own shuttle flights to Oakland.

Mr. Hutcheson explained that the procedure for transferring the interstate passengers from U. S. Aircoach to California Central at Burbank was as follows: U. S. Aircoach prepares a transfer passenger manifest which lists the names of all passengers to be transferred from each U. S. Aircoach flight to California Central. No invoices are used as U. S. Aircoach always makes payment to California Central on the basis of the transfer manifest which is delivered to the California Central ticket counter. U. S. Aircoach issues a check to California Central in the amount of the total fares for the passengers transferred less a 15% commission plus the federal transportation tax. California Central acknowledges receipt of this payment by a written receipt which is given to U. S. Aircoach. Colonel Sherman, the president of California Central, with whom he had negotiated the arrangement, insisted

that U. S. Aircoach pay this tax on the continuing transportation, even though the passengers have paid the tax on the transportation from their origin outside of California through to their final destination in California so that there is a duplication of the tax payment on the portion of the transportation performed by California Central. Mr. Hutcheson explained that U. S. Aircoach files an application with Internal Revenue Service for reimbursement of the duplicated tax paid on the continuing transportation provided by California Central.

Affiant examined the records of U. S. Aircoach at Burbank on October 1, 1953. These showed that this air carrier has during the past two years been delivering interstate passengers to California Central for continuing transportation from Burbank. Photostatic copies of documents with respect to two representative flights involving transfers of interstate passengers at Burbank from U. S. Aircoach to California Central are attached hereto as Exhibits 1 and 2.

The documents comprising Exhibit 1 establish that 2 passengers who were flown from Burbank to San Diego on California Central flight 534 on September 4, 1953, were transported to Burbank from various points outside of California on [16] U. S. Aircoach flight 903W. Thus Exhibits 1(a) and 1(b) are passenger manifests of U. S. Aircoach flight 903W showing that passengers Hamilton and Wolz were transported on this flight from Philadelphia, Pa., and Chicago, Ill., respectively, depart-

ing these cities on September 3, 1953. Copies of the tickets of these two passengers are also included in Exhibits 1(a) and 1(b) and show that Messrs. Hamilton and Wolz were issued tickets covering their transportation from their points of origin on U. S. Aircoach flight 903W to San Diego, their final destination. Upon arrival of U. S. Aircoach flight 903W at Burbank, these two passengers were transferred to California Central flight 534 for their continuing transportation to San Diego as shown by Exhibit 1(c) which includes a copy of the transfer manifest of U. S. Aircoach and the receipt of California Central acknowledging payment by U. S. Aircoach of the fares of the two transferred passengers from Burbank to San Diego. A notation at the bottom of the receipt shows that U. S. Aircoach made payment to California Central for the transportation of these two passengers by Check Number 2686 on September 4, 1953.

Exhibit 2 is a copy of a transfer manifest of U. S. Aircoach which shows that on September 12, 1953, this air carrier transferred three interstate passengers to California Central at Burbank for continuing transportation to San Diego. This manifest shows that the three passengers had been transported to Burbank from Chicago, Ill., on U. S. Aircoach flight 911W. A note on the manifest shows that the cost of the continuing transportation on California Central was approved by one W. C. Winget with the entry "16.89 OK-to CCA." Included in Exhibit 2 is a copy of a receipt given U. S.

Aircoach by California Central in acknowledgement of receipt of the payment for the continuing transportation for the 3 passengers from Burbank to San Diego. An entry at the top of this receipt shows that U. S. Aircoach made this payment by Check Number 2708 on September 12, 1953.

5. Affiant also visited the Skycoach ticket counter at Lockheed Air Terminal, Burbank, California, on October 1, 1953, where he interviewed Mr. R. F. Coleman, the employee on duty, regarding the arrangements for handling continuing transportation of passengers arriving Burbank from points outside of California on Currey Air Transport, Ltd., Great Lakes Airlines, Inc., and Monarch Air Service. Mr. Coleman stated that the San Diego passengers are [17] transferred at Burbank to flights of California Central or Pacific Southwest Airlines. He explained that Currey, Great Lakes, and Monarch usually operate through to Oakland and the Oakland passengers continue on the same transcontinental flight from Burbank except when aircraft are not available or the passenger load is not sufficient to warrant the operation of the flights beyond Burbank. On these exceptional occasions, the Oakland passengers are transferred to flights of California Central or Pacific Southwest for the continuing transportation. Mr. Coleman stated that Skycoach prepares transfer manifests listing the names of the passengers transferred from the Currey, Great Lakes, and Monarch flights to California Central and Pacific Southwest.

Affiant examined the cash disbursement ledger of Currey Air Transport, Ltd., in Los Angeles, California, on October, 1953. This showed that Currey has made payments to California Central for the carriage of interstate passengers transferred from Currey flights to California Central at Burbank. Photostatic copies of several representative payments to California Central for the carriage of such interstate passengers are attached hereto as Exhibits 3 and 4.

Exhibit 3 (2 pages) is a copy of Currey's Cash Disbursement Ledger for June, 1953. This shows that on June 1, 1953, Currey issued Check Number 1454 in the amount of \$244.60 to California Central for continuing transportation of several interstate passengers.

Exhibit 4 (2 pages) is a copy of Currey's Cash Disbursement Ledger for August, 1953. This shows that on August 3, 1953, Currey issued Check Number 1558 to California Central in the amount of \$96.87 and made another disbursement to California Central by Check Number 1597 on August 28, 1953, in the amount of \$22.52. These checks were in payment for continuing transportation provided for Currey passengers transferred to California Central at Burbank.

6. On October 1, 1953, affiant also visited the ticket counter of North American Airlines at Lockheed Air Terminal, Burbank, and interviewed Mr. Jack Wootton, the agent on duty, with respect to

the transfer of interstate passengers by North American to California Central.

Mr. Wootton stated that North American operates its own shuttle flights between Burbank and Oakland and Burbank and San Diego if aircraft are available [18] and there is a sufficient passenger load; otherwise, the Oakland and San Diego passengers are transferred to either California Central or Pacific Southwest Airlines.

The procedure for transferring interstate passengers from North American to California Central as explained by Mr. Wootton, is as follows: Since about June of 1953, North American usually has two inbound flights arriving in Burbank at about 9 a.m. These are flight 600, which arrives from New York via Dallas, and flight 201, which arrives from New York via Chicago. North American, in advance of the flight arrivals, prepares an Operation Advisory Sheet, Form M 9. This shows what provisions are to be made for passengers continuing from Burbank to other points in California. If North American has a sufficient passenger load and aircraft are available, the San Diego and Oakland flights will be shown together with the NC numbers of the aircraft scheduled for the operation of these flights. If the continuing flights are not to be operated by North American, the Advisory Sheet will note that the continuing passengers are to be off-spaced. In that event, Mr. Wootton checks with both California Central Airlines and Pacific Southwest Airlines to see what flights they

have available and to determine whether they have sufficient space to accommodate the continuing North American passengers. If the flight and space are available, Mr. Wootton then blocks off a number of seats equivalent to the number of continuing passengers on whichever carrier can accommodate them. Usually the North American stewardess prepares the transfer manifest for the passengers on her flight prior to arrival in Burbank. However, sometimes this manifest is not made up by the stewardess and Mr. Wootton then prepares it after the arrival of the flight. When passengers check in at the North American ticket counter, Mr. Wootton examines the passengers' incoming flight tickets. If the ticket is for a one-way trip, Mr. Wootton validates the passenger receipt coupon with a North American stamp, returns this to the passenger, and instructs him to check in at the California Central or Pacific Southwest ticket counter. If the passenger holds a round trip ticket which contains a return flight coupon, Mr. Wootton prepares a North American exchange order which is given to the passenger. The passenger then checks with California Central or Pacific Southwest, as the case may be, [19] and submits the validated passenger receipt or exchange order covering his continuing transportation in California.

Affiant observed flights of North American Airlines and California Central on October 1, 1953, when 8 interstate passengers were transferred from North American to California Central for continu-

ing transportation to San Diego. North American flights 201 and 600 arrived Burbank at approximately 10:00 a.m. with a total of 8 passengers destined to San Diego, 5 from flight 201 and 3 from flight 600. The San Diego passengers reported to the ticket counter of North American Airlines in the Lockheed Air Terminal, where they checked in with Mr. Jack Wootton, the agent on duty. Affiant observed Mr. Wootton prepared two transfer manifests, one listing the name of the San Diego passengers from flight 201 and the other listing the names of the San Diego passengers from flight 600. The passenger addresses, the number of bags, and the baggage weight were also listed on these transfer manifests. Mr. Wootton stated to affiant that the baggage had been checked through to San Diego at the points of origin of these passengers and was transferred from the North American aircraft to the California Central aircraft for the continuing trip to San Diego. He explained that the baggage was not rechecked for the flight on California Central. As the passengers checked in, Mr. Wootton asked for their tickets. The tickets of passengers holding one-way tickets were validated. As Mr. Wootton returned these to the passengers he instructed them to check in at the California Central ticket counter on the other side of the lobby and present their tickets for the flight to San Diego. Mr. Wootton made up North American exchange orders for the passengers holding round trip tickets with return flight coupons. As he returned the round-trip tickets to the passengers, he gave them

these exchange orders and instructed the passengers to check in at the California Central ticket counter and present them for their flight to San Diego. Mr. Wootton explained to affiant that it was necessary to issue these exchange orders for continuing transportation on California Central to the passengers holding round-trip tickets as the return trip flight coupons would be needed by the passenger for return passage and could not be submitted to California Central. He said North American Airlines has a credit arrangement with California Central so that it is not [20] necessary for him to make any cash payment for the continuing transportation. Mr. Wootton explained that California Central picks up the passenger receipt coupon of the one-way tickets and the exchange orders as the passengers check in and use these along with the transfer manifests to support their later billing to North American for the transferred passengers carried.

Affiant observed the passengers report to the California Central ticket counter after leaving the North American ticket counter. At the California Central counter, they checked in with Mr. E. Evans, agent on duty, for their continuing trip to San Diego. Mr. Evans picked up their one-way tickets and exchange orders. He removed the passenger receipt coupon from the one-way tickets and returned the ticket folder to these passengers. Affiant observed that Mr. Evans gave gate passes to the passengers as he instructed them that they would be flying on California Central flight 534 to San Diego. Affiant observed that Mr. Evans made up

California Central tickets for each passenger received from North American for the trip from Burbank to San Diego. These California Central tickets were neither shown to or submitted to the transfer passengers.

Affiant interviewed Pfc. Ronald A. Robbins, Serial 1388883, B Battery, First AAA, AW Battalion, Camp Pendelton, California, one of the passengers, who stated that he had arrived in Burbank on October 1, 1953, from Washington, D. C., on North American Airlines flight 600. Pfc. Robbins stated that he was instructed to report to the ticket counter of California Central after he had checked at the North American Airlines ticket counter. He explained that his ticket had been stamped at the North American Airlines ticket counter. Pfc. Robbins stated that when he checked in at the California Central ticket counter, the agent picked up his ticket, removed a coupon and returned the back of the folder to him, along with a California Central gate pass as his authorization to board California Central flight 534 to San Diego. Affiant observed that the number of the North American ticket was OW-1, 33643. Pfc. Robbins stated that he had purchased his ticket in Washington, D. C., from North American Airlines for his trip from Washington to San Diego and had paid a total fare of \$111.55. Pfc. Robbins advised that he had paid no additional fare at Burbank for his transportation from Burbank to San Diego. He submitted for affiant's

inspection the folder of his [21] North American ticket, the California Central gate pass, and his baggage check. Affiant observed that the baggage claim check held by Pfc. Robbins was issued by North American Airlines and bore the Number C-54500. It covered the check of his baggage from Washington, D. C., to San Diego. Pfc. Robbins stated that California Central had made no inquiry of him as to whether he was continuing his trip from a point outside of the State of California. Pfc. Robbins stated that when the California Central agent asked for his address, he had given this as Bennington, N. H.

After observing Pfc. Robbins and the other passengers board California Central flight 534 which departed Burbank at approximately 11 a.m. on October 1, 1953, affiant proceeded to the ticket counter of California Central where he submitted his CAB credentials to Mr. Evans and later to Mr. U. D. McDonald, Southern Region Manager of California Central. A request was made to these persons for permission to inspect the records of flight 534, including the transfer manifests and documents picked up from the passengers transferred from flights of North American Airlines. Mr. Evans stated that these documents had been returned to North American Airlines. Mr. McDonald would not permit affiant to make a copy of the California Central flight 534 passenger manifest. Upon further request, he made available the California Central tickets for affiant's examination.

Affiant observed that California Central ticket B47916 was issued for Pfc. Robbins, and was validated as follows: "CCA October 1, 1953, Burbank."

7. Affiant examined the records of North American for August, September, and October, 1953, in the executive offices of North American Airlines at Burbank during October, 1953, and found numerous instances of westbound transcontinental flights involving transfers of passengers at Burbank from the North American carriers to California Central for onward transportation to San Diego and Oakland. Affiant made photostatic copies of the documents with respect to several representative flights. These documents are attached hereto as Exhibits 5 through 14. Each of these Exhibits consists of (1) the passenger manifests of the North American flight on which the passengers were transported from points outside the State of California to Burbank, (2) the passenger coupons of tickets purchased by passengers for their flights from such points outside the State of California to [22] their ultimate destination in the State of California, (3) the transfer manifest for the continuing transportation on California Central of the passengers from Burbank to their final destination in California, (4) the North American exchange orders issued to California Central to provide the continuing transportation of passengers holding round-trip tickets, and (5) the "Request for Check" form showing the check issued to California Central in payment for the continuing transportation.

For example, the documents on the transfer of the 8 interstate passengers from North American to California Central which was observed by affiant on October 1, 1953, at Burbank are attached hereto as Exhibit 5. Thus, Exhibit 5(a) is a passenger manifest showing that passengers Mr. and Mrs. Orth were transported from New York to Burbank on North American flight 600, which departed New York (La Guardia Airport) on September 30, 1953. Exhibit 5(b) is a passenger manifest showing that passenger Robbins was transported from Washington, D. C., to Burbank on North American flight 600 which departed Washington the same day. Exhibit 5(c) is a passenger manifest showing that passengers Lane and Winus were transported from Chicago to Burbank on North American flight 201 which departed Chicago on September 30, 1953. Exhibit 5(d) is a passenger manifest showing that passengers Herzue, Hixon, and Nolan, were transported from Kansas City, Mo., to Burbank on North American flight 201 which departed Kansas City on October 1, 1953. Upon arrival of North American flights 600 and 201 in Burbank on October 1, 1953, these 8 passengers were transferred to California Central flight 534 for continuing transportation to their final destination, San Diego. Copies of the transfer manifest from North American flights 600 and 201 to California Central are attached hereto as Exhibits 5(e) and 5(f), respectively. Also included in Exhibits 5(e) and 5(f) are copies of the passenger coupon of the interstate passengers who held one-way North American

tickets and exchange orders for the passengers who had round-trip tickets which were needed for return-trip transportation and could not be submitted to California Central. The passenger coupons show that the passengers were issued tickets covering their transportation from their points of origin on North American to San Diego, their final destination. The manifests, passenger coupons, and exchange orders in Exhibits [23] 5(e) and 5(f) were picked up by California Central on October 1, 1953, when the passengers transferred from North American flights 201 and 600. The documents were later submitted to North American by California Central in support of the billing for the continuing transportation provided by California Central, and were attached to the document "Request for Check" which is submitted as Exhibit 5(g). This shows that Check 8776 was issued on October 2, 1953, to California Central in payment for the transportation of 8 passengers from Burbank to San Diego. This payment is shown on the Ledger Account with California Central Airlines which is attached as Exhibit 5(h). The disbursement was described as "Reference 2108." Numerous other disbursements charged to this same reference were made for the period included on Exhibit 5(h) from August 20, 1953, to October 8, 1953. Affiant determined that it was not practical to secure copies of all documents pertaining to the transfer of interstate passengers to California Central as shown by these disbursement entries because of the large volume of photocopies that would be involved. Documents

for a few representative flights were obtained and are attached hereto as the following Exhibits:

Exhibit 6 includes passengers' manifests of North American flights 600 and 201 which show the names of passengers who arrived in Burbank on September 24, 1953, from points outside of California. Copies of the passenger coupons show that the tickets issued to these passengers covered transportation from the points outside of California to the final destination, San Diego. Upon arrival in Burbank, 12 of the passengers were transferred to a flight of California Central as shown by the transfer manifest. The "Request for Check" shows that California Central was paid for the continuing transportation.

Exhibit 7 includes the passenger manifests of North American flight 203 which show the names of passengers who departed New York and Detroit for Burbank on this flight on September 13, 1953. Upon arrival in Burbank on September 14, 1953, the San Diego passengers were transferred to a flight of California Central for their continuing transportation. Copies of the passenger coupons of these transfer passengers show that their tickets were issued by North American from origins outside of California to San Diego. A copy of the transfer manifest from North American to California Central show that the passengers were carried by [24] California Central from Burbank to San Diego. The "Request for Check" shows that California Central was paid for this transportation.

Exhibit 8 consists of the passenger manifests of North American flights 600 and 201 which arrived Burbank on September 10, 1953, from points east of California and include the names of 7 passengers destined to San Diego. Copies of the transfer manifest show that these 7 passengers were transferred to a flight of California Central on September 10, 1953, for continuing transportation from Burbank to San Diego. The passenger coupons of these passengers show that their tickets were issued by North American for transportation from their origins to San Diego and the "Request for Check" shows that California Central was paid for the continuing transportation from Burbank for the 7 San Diego passengers.

Exhibit 9 includes passenger manifests of North American flight 203 which arrived Burbank on September 4, 1953, and points east of California and show the names of 5 passengers destined to San Diego. The exchange orders and invoice from California Central show that these 5 passengers were transported from Burbank to San Diego on a flight of California Central on September 4, 1953. A copy of the "Request for Check" shows that this continuing transportation from Burbank was paid to California Central.

Exhibit 10 consists of passengers' manifests of North American flights 201 and 600 which departed from Chicago and Dallas, respectively, on September 3, 1953, and show the names of 6 passengers

destined to San Diego. The transfer manifest of North American to California Central on September 3, 1953, includes the names of these 6 passengers, showing that California Central provided continuing transportation from Burbank to San Diego. A copy of the "Request for Check" shows that the disbursement made by Check 8570 was in payment of the continuing transportation for 14 San Diego passengers, which included the 6 passengers on September 3, 1953, and 8 passengers on September 4, 1953, who were listed on the manifests described in Exhibit 11.

Exhibit 11 consists of passenger manifests of North American flight 600 which arrived Burbank on September 4, 1953, and includes the names of 8 passengers destined to San Diego. These 8 passengers are listed on the transfer manifest to California Central showing that California Central provided the continuing [25] transportation from Burbank to San Diego on September 4, 1953. Payment of this continuing transportation to California Central is in the disbursement described in the "Request for Check" in Exhibit 10.

Exhibit 12 is a copy of manifest of North American flight 600 which shows the names of 3 passengers who were transported on this flight to Burbank, departing Dallas on August 29, 1953. An entry on the manifest shows that the passengers were transferred to California Central for continuing transportation to Oakland.

Exhibit 13 includes a copy of a passenger mani-

fest of Twentieth Century Airlines dated August 29, 1953, and captioned "Passengers Given to Other Carriers." Entry on this document shows that 5 passengers were transferred at Burbank to California Central for continuing transportation to San Diego. The names of the passengers are listed on the transfer manifest which notes that they were transferred from flight 600 on August 29, 1953. Passenger coupons of the passengers show that they were issued North American tickets from points outside of California to San Diego. The "Request for Check" shows that payment on the continuing transportation for the 5 passengers was made to California Central by check No. 8487 on August 29, 1953.

Exhibit 14 consists of a passenger manifest of North American flight 201 which departed Chicago on August 28 and arrived Burbank on August 29, 1953. The names of 14 of the San Diego passengers who originated in Chicago listed on this manifest are shown on the passenger manifest of California Central for flight 556 from Burbank to San Diego on August 29, 1953. Copies of North American tickets show that these covered transportation from the point of origin outside of California to San Diego. A transfer manifest of Twentieth Century Airlines shows that 14 passengers were transferred to California Central for transportation to San Diego and the manifest is dated by the stamp for August 29, 1953. A copy of the "Request for Check" shows that payment for the continuing transportation of

the 14 passengers to San Diego on August 29, 1953, was made to California Central.

/s/ JOSEPH W. STOUT, JR. [26]

Subscribed and sworn to before me this 28th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public, D. C.

My commission expires 1/14/58. [27]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

Robert F. Rickey, being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. Investigation by affiant of a number of California Central Airlines, Inc. (California Central), flights arriving at Lockheed Air Terminal, Burbank, from San Diego during November and December, 1953, disclosed that California Central is available to, and is used by San Diego ticket agents to connect their San Diego passengers with the eastbound transcontinental flights of Large Irregular Carriers

operating from Lockheed Air Terminal. The California Central flight most generally used is flight 579 arriving at Burbank from San Diego at approximately 7:45 p.m. For the most part, the transcontinental passengers travelling on California Central from San Diego to Burbank are transferred at Burbank to the so-called North American carriers, consisting of Hemisphere Air Transport, Trans American Airways, Trans National Airlines, Inc.; Twentieth Century Airlines, Inc., and The Unit Export Company, Inc.; and the Skycoach carriers, consisting of Currey Air Transport, Ltd., and Great Lakes Airlines, Inc. Some of such passengers, however, are routed via other Large Irregular Carriers represented by the American Air Bus Agency including U. S. Aircoach, Peninsular Air Transport, Aero Finance Corporation, Air Services, Inc., and Caribbean American Lines, Inc. On every arrival of flight 579 observed by affiant, there was at least one passenger and usually several who, after claiming their luggage, checked in for the eastbound transcontinental flights on one [84] of the Large Irregular Carriers. The following are representative flights.

a. On November 30, 1953, 2 of the 4 passengers deplaning from flight 579 at Burbank were interviewed. Machinists Mate 2nd Class (MM2) J. C. Garner, U.S.N., Route 2, Box 210, Newport, North Carolina, had been issued CCA ticket No. B 43910 for San Diego-Burbank transportation in conjunction with North American ticket No. OW-146376 validated "NAA Nov. 28 S.D." by North Ameri-

can's San Diego ticket office and made out for flight 101 of November 30 to New York. Although flight 101 originates at Burbank, the North American ticket showed the routing as San Diego to New York. Fare was indicated as \$99.00 plus \$14.85 tax or a total of \$113.85. In this instance, North American absorbed the cost of the California Central ticket (\$6.38) since it was not added to the \$113.85 cost of the North American ticket. In fact, \$113.85 is North American's established tariff (including tax) from San Diego to New York. Baggage tag No. 4358 was attached to Garner's bag when he checked in with California Central at San Diego.

b. On December 1, 1953, both the North American and the Skycoach transcontinental flights were delayed in leaving Burbank. The reason for this delay, as explained by North American agents James Hart and Edward MacAndrews was that California Central Airlines, scheduled to shuttle connecting passengers from Oakland for the Burbank flights, had a mechanical failure at Oakland and another aircraft had to be dispatched from Burbank to pick up these passengers and bring them to Burbank. This flight had 25 connecting passengers for North American and 17 for Skycoach.

c. At 12:10 a.m. on December 2, 1953, California Central's Martin 202 aircraft N93052 arrived from Oakland. All passengers deplaning apparently were connecting passengers for either the North American or Skycoach flights and were sent directly to the waiting DC-4's without further check-in. Their bag-

gage was transferred directly from the California Central aircraft to the North American and Skycoach aircraft.

d. On December 9, 1953, 9 passengers from a total of 11 leaving California Central flight 579 at Burbank checked in at the North American, Skycoach, and American Air Bus counters after first claiming their luggage which was checked [85] only to Burbank by California Central.

e. On December 10, 1953, at 7:10 a.m., Skycoach (Great Lakes Airlines, Inc.) flight 912 arrived at Lockheed Air Terminal, Burbank, from New York and intermediate cities. Three passengers continuing on to San Diego were sent by the Skycoach counter agent to the California Central ticket counter with a slip of white paper which listed the three names. The California Central agent took the paper and advised them to first claim their luggage in front of the terminal and then return to the counter for check-in. He then issued California Central Burbank-San Diego tickets to these passengers.

Seaman R. Linn (U. S. Navy), 511 Avenue I, Coronado, California, one of these three San Diego passengers, was interviewed while he was waiting for the California Central flight. He held Skycoach ticket RT7700 which showed a routing of New York to San Diego and San Diego to New York. Fare shown was \$160.00 plus \$24.00 Federal Tax or a total of \$184.00. It was made out for flight 912 of December 9 which is the flight actually used. Printed

on the ticket was "Great Lakes Airlines, Inc., Lockheed Air Terminal, Burbank, California," and in the "sub-agent" space was the notation, "Central 10037." Seaman Linn explained that his original ticket (actually exchange order No. 10037) had been purchased at Westover Air Force Base, Springfield, Massachusetts. The Skycoach ticket RT7700 for which this was exchanged at La Guardia Field, New York, was validated "Skycoach Airlines Agency of N. Y., Inc., Dec. 9, '53, Marine Terminal, LAG." The ticket was in a white jacket bearing the printed message, "Always Fly Skycoach."

At the California Central counter he was issued California Central ticket No. B-50568 for flight 324 on December 10 from Burbank to San Diego. The ticket was printed to show a fare of \$5.55 plus 83c tax or a total of \$6.38 but Linn said no additional collection was made from him at either the Skycoach or California Central counters so presumably the cost of the ticket was absorbed by Skycoach or Great Lakes. The California Central ticket was stapled inside a folder along with the baggage claim check and a California Central gate pass was issued to Linn marked "Flt. 324, Mfst. No. 4."

3. On December 2, 1953, an inspection was made of tickets for North [86] American's flight 101 of the previous evening. This check was made in the offices of Republic Air Coach System, the financial and accounting unit of the North American combine, in Building No. 11, Lockheed Air Terminal, Burbank. During this check, it was noted that on many

of the North American tickets issued in San Diego, there was a California Central or Pacific Southwest Airlines (another California intrastate carrier) ticket number written in the "Conjunction Ticket" box of the North American ticket. Following is information on 2 such tickets against which California Central conjunction tickets were issued.

North American ticket No. OW-146211 was issued to E. Wisolowski, 1858 South 36th St., Milwaukee, Wisconsin, for transportation from San Diego to Chicago on North American flight 101 of December 1, 1953, for \$75.00 plus \$11.25 tax or a total of \$86.25. The ticket was validated "Nov. 28, '53 S.D." by North American's San Diego ticket office. Written in the conjunction ticket space was "CCA XO-3898." This means that San Diego-Burbank transportation was furnished by California Central to connect with NAA at Burbank. Apparently no extra charge was made here for the California Central ticket over and above the regular \$75.00 North American tariff.

North American ticket No. OW-146212 was issued to R. M. Reid, 454 Neisel Avenue, Springfield, New Jersey, and showed a routing of San Diego to New York on North American flight 500 for December 1 (this flight was consolidated with flight 101 on Dec. 1). Fare shown on the ticket was \$99.00 plus \$14.85 tax or a total of \$113.85. It was validated "Dec. 1, '53 S.D." by agent "B.J.L." in North American's San Diego office. On the ticket is noted "CCA 2625" which is the conjunction ticket

issued for San Diego-Burbank transportation via California Central.

4. During a later check of North American tickets in Republic's office on December 14, 1953, similar examples were obtained from North American flight coupons lifted for flight 101 of the previous evening, Dec. 13, 1953. These were photographed and are Exhibits 3 and 4 of this report. Cross-references to California Central tickets in the "Conjunction Ticket" space are indicated by the letters [87] CCA.

5. On March 9, 1954, affiant again arrived in Los Angeles, California, from Las Vegas, Nevada. The purpose of the trip at that time was to determine whether California Central would accept an interstate passenger for transportation.

Affiant arrived at Los Angeles International Airport via Western Airlines flight 31 which arrived Los Angeles at 6:25 p.m., on that date. Affiant's ticket was American Airlines stock No. O13B-25173.

Upon arrival affiant went to the California Central ticket counter at Los Angeles International Airport and inquired of California Central Agent Edward Winslow, who was on duty, about the next flight to San Francisco. Winslow advised affiant that there would be a California Central Martinliner leaving at 7:25 p.m., but it was a first-class flight costing \$15.53 rather than the lower DC-3 fare of \$13.46.

Affiant during the conversation had the Western Airlines ticket envelope in his hand and twice told

Agent Winslow that affiant had just arrived from Las Vegas on Western, describing the flight as being a little bumpy. Agent Winslow's only comment was if affiant's ticket was made out to San Francisco, California Central could not accept it for passage but affiant could have it refunded by Western and then purchase a California Central ticket with the refund. Affiant advised him he would obtain the refund later.

Affiant thereupon purchased California Central ticket No. A215729 at a cost of \$15.53, being \$13.50 fare plus \$2.03 tax. The ticket was made out for flight 579 on March 9, 1954, from Los Angeles to San Francisco. The major portion was detached and retained by Agent Winslow but the passenger receipt portion was stapled inside a California Central folder which was handed to affiant. This ticket folder is attached hereto as Exhibit 5.

Because of weather conditions affiant was transported by automobile from Los Angeles International Airport to Lockheed Air Terminal at Burbank. Upon arrival there, affiant and other passengers boarded California Central flight 579, which arrived in San Francisco at 10:10 p.m. the same evening.

[Seal] /s/ ROBERT F. RICKEY.

Subscribed and sworn to before me this 26th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,

Notary Public, D. C.

My Commission expires 1/14/58. [88]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

Mrs. James E. Cook, being first duly sworn, deposes and says that:

1. She resides at 1225 Savannah Street S. E., Washington, D. C.

2. On or about Tuesday, December 8, 1953, while visiting at 1450 E. Washington Street, San Diego, California, she phoned the number listed in the then effective San Diego phone directory as that of Air America, for the purpose of making reservations for herself and her two-year-old daughter, and her infant son to fly to Washington, D. C.

3. She did in fact make such reservations on a flight, which according to the reservations agent was to depart San Diego at 7 p.m. on December 11, 1953, and arrive in Washington, D. C., at 2:30 p.m. EST, on December 12, 1953.

4. On Friday, December 11, 1953, tickets were delivered to her at the address stated in paragraph 2 above, for which she gave the messenger a check in the amount of \$154.39. The ticket envelope contained California Central gate passes for herself and for her daughter, Miss Ardis Cook, and the document attached as Exhibit #1 was the Gate pass for her daughter.

5. Inside each gate pass was stapled a ticket for

transportation on California Central Airlines from San Diego to Burbank, California, and a North Star Aircoach ticket for transportation from Burbank to Washington, D. C. [121]

6. On December 11, 1953, she and her two children appeared at the California Central Airlines counter at Lindbergh Field, San Diego, at approximately 6:30 p.m. PST, presented their tickets to the agent on duty, who removed the California Central Airlines tickets from the gate pass, and they did in fact fly from San Diego to Burbank, California, on a California Central Airlines plane that was scheduled to depart from San Diego at 7 p.m. PST, but which did in fact depart at approximately 7:30 p.m.

7. Immediately upon arrival at Burbank, she checked in at the Caribbean American counter, as directed in the California Central gate pass attached as Exhibit 1, for flight 1211E which was to depart for Washington, D. C., at 9:30 p.m. PST, December 11, 1953. Due to protracted delays of such flight, she cancelled her reservations on Caribbean American Airlines and subsequently flew to Washington on American Airlines.

/s/ MRS. JAMES E. COOK,
(Muriel Cook.)

Sworn to before me this 8th day of March, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public, D. C.

My Commission expires: 1/14/58. [122]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR JUDGMENT
ON THE PLEADINGS

Please Take Notice that the undersigned will bring the attached Motion on for hearing before the above-entitled Court at Room 5, United States Courts and Post Office Building, Los Angeles, California, on the 19th day of July, 1954, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Said Motion will be based upon plaintiff's Complaint and defendant's Answer thereto, the Points and Authorities filed in these proceedings, and will be made pursuant to Rule 12 of the Federal Rules of Civil Procedure.

Dated: July 12, 1954.

PERRY H. TAFT, and

ALFRED C. ACKERSON,

By /s/ ALFRED C. ACKERSON,

Attorneys for Defendant. [135]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
ON THE PLEADINGS

Defendant moves the Court to enter judgment on the pleadings in favor of the defendant and to dismiss this cause at the plaintiff's costs for the reason that the plaintiff in its complaint has failed to state a claim against the defendant upon which relief can be granted.

Dated July 12, 1954.

PERRY H. TAFT, and
ALFRED C. ACKERSON,
By /s/ ALFRED C. ACKERSON,
Attorneys for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 13, 1954. [136]

[Title of District Court and Cause.]

ORDER

Westover, J:

For the reasons set forth in Memorandum of Opinion re Order to Show Cause in Case #16,754, Civil Aeronautics Board vs. Friedkin Aeronautics, Inc., which Memorandum was filed this date, defendant's motion to dismiss in the above-entitled action is granted.

Dated: September 17, 1954.

[Endorsed]: Filed September 17, 1954. [138]

United States District Court, Southern District
of California, Central Division

Civil No. 16755-HW

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

CALIFORNIA CENTRAL AIRLINES, INCOR-
PORATED,

Defendant.

ORDER AND JUDGMENT GRANTING
MOTION TO DISMISS

This cause came on for hearing on the 19th, 22nd, 23rd, and 26th days of July, 1954, on the motion of plaintiff for preliminary injunction and on the motion of defendant to dismiss the Complaint; whereupon, after receiving evidence, both oral and documentary, and after hearing arguments of counsel for the respective parties, and upon due consideration thereof,

It is Hereby Ordered, Adjudged, and Decreed that the motion of plaintiff for a preliminary injunction be and hereby is denied; that the motion of defendant for dismissal of the action be and hereby is granted, and that judgment is hereby rendered dismissing the Complaint.

Dated: September 23rd, 1954.

/s/ HARRY C. WESTOVER,

U. S. District Judge. [139]

Approved as to form:

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

ANDREW J. WEISZ,
Assistant U. S. Attorney;

JAMES E. KILDAY and
ALBERT PARKER,
Special Assistants to the
Attorney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics
Board;

By /s/ ANDREW J. WEISZ,
Attorneys for Plaintiff.

[Endorsed]: Filed September 23, 1954.

Docketed and entered September 24, 1954. [140]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS UNDER RULE
73 (b)

Notice is hereby given that the Civil Aeronautics Board, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and final judgment entered in this action on September 23, 1954, denying plaintiff's motion for a preliminary injunction and granting the motion of defendant for dismissal of the action,

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

/s/ DANIEL M. FRIEDMAN,
Special Assistant to the
Attorney General;

JOHN F. WRIGHT,
Attorney, Office of Compliance, Civil Aeronautics
Board, Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 22, 1954. [142]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 149, inclusive, contain full, true and correct copies of Complaint; Answer; Order to Show Cause with Affidavits in Support; Affidavit of Edna K. Sherman in Opposition to Temporary Injunction; Motion and Notice of Motion for Judgment on the Pleadings; Order Granting Motion to Dismiss; Order and Judgment Granting Motion to Dismiss; Notice of Appeal; Order Extending Time to File Record and Docket Appeal; Designation of Record on Appeal and Statement of Points on Which Appellant Intends to Rely on Appeal; which, together with the original Plaintiff's Exhibits 1 to 11, inclusive, transmitted herewith; and the Reporter's Transcript of Proceedings held on July 19, 22, 23 and 26, 1954, and Memorandum of Opinion Re Order to Show Cause, which are physically a part of the transcript of record on appeal in the case of *Civil Aeronautics Board v. Friedkin Aeronautics, Inc., etc.*, District Court No. 16,754-HW Civil, a companion case to the one herein, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 7th day of February, 1955.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14649. United States Court of Appeals for the Ninth Circuit. Civil Aeronautics Board, Appellant, vs. California Central Airlines, Incorporated, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: February 8, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 14648

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

CALIFORNIA CENTRAL AIRLINES, INCOR-
PORATED,

Appellee.

No. 14649

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Busi-
ness as PACIFIC SOUTHWEST AIRLINES,

Appellee.

STIPULATION RE CONSOLIDATION OF
APPEALS AND ORDER THEREON

Whereas, the above-entitled actions were tried together in the United States District Court for the Southern District of California, Central Division, before the Honorable Harry C. Westover, Judge of said Court, and

Whereas, the said actions present common questions of law, and were decided upon said common questions of law in the Court below, and

Whereas, it appears both expedient and economical that these appeals should be heard and considered together,

It Is Hereby Stipulated by and between the respective parties hereto, through their attorneys, and subject to the approval of the Court, that the said appeals may be heard and considered together and consolidated for the purposes of appeal.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief Civil Division;

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

JAMES E. KILDAY, and
ALBERT PARKER,
Special Assistants to the Attorney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics
Board, Attorneys for Appellant.

MESERVE, MUMPER &
HUGHES,

By /s/ LEWIS T. GARDINER,
Attorneys for Appellee, Fried-
kin Aeronautics, Inc.

QUITTNER & STUTMAN,
PERRY H. TAFT, and
ALFRED C. ACKERSON,

By /s/ ALFRED C. ACKERSON,
Attorneys for Appellee, Cali-
fornia Central Airlines, Inc.

ORDER

Upon consideration of the foregoing stipulation,
and good cause appearing therefor,

It is Ordered that the above-entitled appeals shall
be heard and considered together, and consolidated
for purposes of appeal.

Dated: Feb. 9, 1955.

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ WM. HEALY,

/s/ H. T. BONE,

Judges of the United States
Court of Appeals.

[Endorsed]: Filed February 10, 1955.

[Title of Court of Appeals and Cause.]

Nos. 14648 & 14649

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

In accordance with Rule 19(6) of the Rules of Practice of this Court, Appellant states that the points on which it intends to rely on appeal are as follows:

Point I.

The District Court erred in holding that the economic regulatory provisions of the Civil Aeronautics Act have no application to a common carrier by air whose operations of aircraft are confined within the boundaries of a single state.

Point II.

The District Court erred in failing to recognize and to hold upon the basis of the record below that defendants are engaged in unauthorized interstate air transportation within the meaning and in violation of the Civil Aeronautics Act.

Point III.

The District Court abused its discretion in denying the motions below for temporary injunctions.

Point IV.

The District Court erred in dismissing the complaints below.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

/s/ DANIEL M. FRIEDMAN,
Special Assistant to the At-
torney General;

JOHN F. WRIGHT,
Attorney, Office of Compliance, Civil Aeronautics
Board, Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 16, 1955.